

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**KENNETH SMITH,**

**Petitioner,**

**-v-**

**FRANCISCO PINEDA, Warden,**

**Respondent.**

**Case No. 1:12-cv-196**

**Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz**

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**ENTRY AND ORDER ADOPTING THE MAGISTRATE JUDGE’S REPORT AND  
RECOMMENDATIONS (Doc. #11) AND SUPPLEMENTAL REPORT AND  
RECOMMENDATIONS (Doc. #17) IN THEIR ENTIRETY AND FINDING THAT  
SMITH’S PETITION FOR A WRIT OF HABEAS CORPUS IS NOT BARRED AS A  
SECOND OR SUCCESSIVE PETITION**

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On August 27, 2012, Magistrate Judge Merz issued a Report and Recommendations (doc. #11) finding that Kenneth Smith’s (“Smith’s”) Petition for a Writ of Habeas Corpus filed on March 9, 2012 is not a second or successive Petition. The Warden objected (doc. #13) and Smith responded to the Warden’s Objections (doc. #15). This Court then recommitted this matter to Magistrate Judge Merz. (Doc. #16.) Magistrate Judge Merz next issued a Supplemental Report and Recommendations with the same finding to which the Warden again objected (doc. #18) and Smith responded to the Warden’s Objections (doc. #19.) The Warden’s objections to both the Report and Recommendations and the Supplemental Report and Recommendations are, therefore, ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that the Warden’s Objections to the Magistrate Judge’s Report and Recommendations and

the Warden's Objections to the Magistrate Judge's Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations are adopted in their entirety. The Petition for a Writ of Habeas Corpus filed by Smith on March 9, 2012 is not a second or successive petition under 28 U.S.C. § 2244.

**DONE** and **ORDERED** in Dayton, Ohio this Fourth day of December, 2012.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record